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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 688 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADAN MOHANLALJI HAVELI @ MOTIHAVELI
Versus
JUNAGADH MUNICIPALITY

Appearance:
1. Special Civil Application No. 688 of 1990
MR RC KAKKAD for Petitioner No. 1
MR PM RAVAL for Respondent No. 1
MR SIRAJ GORI, AGP for Respondent No. 2
MR YF MEHTA for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 16/06/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this petition under Article 226 of the

Constitution, the petitioner, sole Trustee and Manager of Shree Madan Mohanlalji Haveli alias Moti Haveli, a registered public trust registered under the provisions of the Bombay Public Trusts Act, 1950 with registration No.A/1614, has challenged the levy of house tax and education cess by the respondent-Junagadh Municipality in respect of land admeasuring 25 Acres and 11 Gunthas in Survey No. 292 situate at Navi Wadi, Junagadh.

2. Survey No. 292 is one of the properties of Shree Madan Mohanlalji Haveli trust (hereinafter referred to as "the petitioner-trust"). It appears that there was a dispute about the properties including the aforesaid land. On enquiry by the Assistant Charity Commissioner and Charity Commissioner, it was declared that 40 items of property including the aforesaid land belonged to the petitioner-trust. The said view came to be confirmed by the judgment dated 21.9.1984 rendered by a Division Bench of this Court in First Appeal No. 163 of 1974 upholding the findings of the Charity Commissioner that all the properties in question save and except those covered under Exhs. 265 and 268 belonged to the public trust. In the judgment dated 29.4.1985 rendered by this Court in Special Civil Application No. 495 of 1978 arising from the proceeding under Section 65 of the Bombay Land Revenue Code also, this Court made the following observations :-

> "There is no dispute that the property in question namely Survey No. 292 has been held to be a property belonging to the public trust by virtue of the said judgment (in FA No. 163/74)."

It appears that the proceedings were commenced under the Land Acquisition Act for acquisition of the aforesaid land bearing Survey No. 292 in the year 1984 and the land was acquired for the benefit of the Gujarat Housing Board in December, 1988. Thereafter, in view of the public notice issued by the Gujarat Housing Board inviting applications for allotment of houses to be constructed on the land bearing Survey No. 292 from amongst the general public, the Junagadh Municipality issued the notice dated 16.12.1989 to the petitioner-trust calling upon them to pay the arrears of house tax assessed at Rs.3,75,399-60 ps and arrears of education cess assessed at Rs.3,47,592/- for the period upto 31.10.1990. Thereupon, the petitioner-trust submitted the letter dated 8.1.1990 pointing out that the land bearing Survey No. 292 belonged to the petitioner-trust and was being exclusively occupied by it till the date of acquisition of the said land by the

Gujarat Housing Board, for charitable purposes of running a gaushala and also for storing the fodder for the cows. The petitioner-trust, therefore, invoked the provisions of Section 271(l) of the Gujarat Municipalities Act, 1963 read with Rule 12(b) of the Junagadh Municipality House Tax Rules under which buildings and lands or portions thereof exclusively occupied for public worship prayer or charitable purpose are exempt from payment of municipal taxes. It appears that no reply was given to the said letter or notice.

3. The petition was filed in the year 1990 and inspite of the notice issued in February, 1990, Rule granted in July, 1991 and the ad-interim relief against coercive recovery confirmed on 19.8.1991, there is no affidavit in reply filed on behalf of the respondent Municipality.

4. We have heard Mr RC Kakkad, learned counsel for the petitioner. As far as the respondent-Municipality is concerned, it appears that earlier Mr PM Raval had filed his appearance for the respondent-Municipality. Mr Harin P Raval states that even before Mr PM Raval came to be designated as a Senior Advocate of this Court, the respondent-Municipality had taken the papers from their office and that they have no instructions to appear in this matter.

5. In absence of any reply to the notice given by the petitioner-trust before filing of the petition and in absence of any affidavit in reply, we have proceeded on the basis that the facts stated in the petitioner have remained uncontroverted. In view of the decision of this Court in First Appeal No. 163 of 1974 holding the land in question as belonging to the petitioner-trust (as confirmed by the Hon'ble Supreme Court in Heir of deceased Maharaj Purshottamlalji vs. Collector, Junagadh, AIR 1986 SC 2094) and in view of the uncontroverted averments made in the notice dated 8.1.1990 and in the memo of the petition that the petitioner-trust was exclusively occupying the land in question for the charitable purposes of running a gaushala and storing the fodder for the cows on the said land, the provisions of Section 271(l) of the Gujarat Municipalities Act, 1963 read with Rule 12(b) of Junagadh Municipality House Tax Rules are clearly attracted. Since the property was exclusively occupied for charitable purposes before acquisition of the said land for the benefit of the Gujarat Housing Board, the property in question was exempt from payment of any municipal taxes.

6. In view of the above discussion, the petition is allowed. The respondent-Junagadh Municipality is permanently restrained from making any recovery of any municipal taxes or other taxes referred to in the notice dated 16.12.1989 (Annexure "B" to the petition).

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-